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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 31725-73879	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/37526	International filing date (day/month/year) 24 November 2003 (24.11.2003)	Priority date (day/month/year) 25 November 2002 (25.11.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): C12N 1/12, 1/14, 1/16, 1/18, 1/20 and US Cl.: 435/252.1, 254.1		
Applicant UNIVERSITY OF GEORGIA RESEARCH FOUNDATION, INC.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of ___ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☒ Certain observations on the international application

Date of submission of the demand 10 June 2004 (10.06.2004)	Date of completion of this report 20 September 2004 (20.09.2004)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/ US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Deborah K. Ware <i>Janice Ford</i> Telephone No. 703-308-0196

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US03/37526

I. Basis of the report

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☒ the description:
 pages 1-35 as originally filed
 pages NONE filed with the demand
 pages NONE filed with the letter of _____
- ☒ the claims:
 pages 36-40 as originally filed
 pages NONE as amended (together with any statement) under Article 19
 pages NONE filed with the demand
 pages NONE filed with the letter of _____
- ☒ the drawings:
 pages 1/1 as originally filed
 pages NONE filed with the demand
 pages NONE filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages NONE as originally filed
 pages NONE filed with the demand
 pages NONE filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages None
- ☒ the claims, Nos. None
- ☒ the drawings, sheets/fig None

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International Application No.
PCT/US03/37528

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)

Claims 1-35 YES
Claims NONE NO

Inventive Step (IS)

Claims 1-13, 15-26, 30-33 and 35 YES
Claims 14, 27-29 and 34 NO

Industrial Applicability (IA)

Claims 1-35 YES
Claims NONE NO

2. CITATIONS AND EXPLANATIONS

Claims 14, 27-29 and 34 lack an inventive step under PCT Article 33(3) as being obvious over Hutkins et al.

Claims are drawn to methods of inhibiting *Listeria monocytogenes* on a surface of a food processing facility, methods of selecting inhibitory bacteria therefore, and method of treating a food product.

Hutkins et al teach methods of inhibiting *Listeria monocytogenes* on a surface of a processed food, methods of selecting inhibitory bacteria therefore, and method of treating a food product.

It would have been obvious to one of skill in the art to inhibit *Listeria monocytogenes* on a surface of a food processing facility and also treating a food as well as selecting for inhibitory bacteria since Hutkins et al teach that a food surface can be treated then to select for the surface upon which the food is prepared would have been an obvious modification. Therefore, the claims are obvious. The inhibitory bacteria are the second population and the contaminating bacteria of the cited reference are considered to be the first population. Clearly one of skill would have expected successful results from the teachings of Hutkins et al.

NEW CITATIONS

US 5,186,962 A (HUTKINS et al) 16 February 1993, see column 7, lines 25-45, line 31, column 11, lines 20-25, column 12, lines 15-35, column 21, lines 1-15 and lines 55-60.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US03/37526

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 14 and 27-29 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claims are indefinite for the following reason(s): they recite "food processing facility" wherein it is not clear what is intended within the meaning of this phrase? Does the facility intend the surface of food to be a food processing facility since food is processed in a facility or does the phrase only mean a kitchen per se? The metes and bounds are not clear.

PATENT COOPERATION TREATY

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NOTE OF INFORMAL COMMUNICATION WITH THE APPLICANT

(PCT Rule 66.6)

International application No. PCT/US03/37526	Applicant's or agent's file reference 31725-73879	Date of informal communication (day/month/year) 16 September 2004 (16.09.2004)
Applicant University of Georgia Research Foundation, Inc.		

<u>Communication</u> <input checked="" type="checkbox"/> by telephone <input type="checkbox"/> personal	<u>Participants</u> <input type="checkbox"/> Applicant: <input checked="" type="checkbox"/> Agent: Brad Addison <input checked="" type="checkbox"/> Examiner(s): Deborah K. Ware	<input checked="" type="checkbox"/> Identity checked <input checked="" type="checkbox"/> authorization checked <input type="checkbox"/> personally known
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Summary of communication:

Applicants' Representative authorized the IPER.

- ☐ An extension of time limit is granted (Form PCT/IPEA/427).
- ☒ A copy of this note is being sent to the applicant with Form PCT/IPEA/429.

PCT/IPEA/424.

Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/ US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Deborah K. Ware Telephone No. 703-308-0196
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Form PCT/IPEA/428 (July 1992)

Janice Ford
for